Supreme Court, U.S.
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No. 85-1755

In the Supreme Court of the United States

OCTOBER TERM, 1985

JAMES E. LEBER,
Petitioner

v.

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES AND UNITED STATES DEPARTMENT OF THE INTERIOR,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES IN OPPOSITION

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QUESTION PRESENTED

Whether the Court of Appeals correctly held that, as a matter of law, the Pennsylvania Department of Environmental Resources was not a "person" subject to the employee protection provision of Section 703 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §1293 (1982).

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RESPONDENT PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES' BRIEF IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. App. A-1 to A-17) is reported at 780 F.2d 372 (3rd Cir. 1986).

JURISDICTION

The decision of the Court of Appeals was entered on January 6, 1986. Jurisdiction is invoked pursuant to 28 U.S.C. §1254(1) (1982).

STATUTES AND REGULATIONS INVOLVED

30 U.S.C. §1274 (1982), Public Agencies, Public Utilities and Public Corporations.

> Any agency, unit, or instrumentality of Federal, State, or local government, including any publicly owned utility or publicly owned corporation of Federal, State, or local government, which proposes to engage in surface coal mining operations which are subject to the requirements of this Act shall comply with the provisions of title V.

30 U.S.C. §1291(19) (1982), Definitions.

> "[P]erson" means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization.

30 U.S.C. §1293 (1982), Employee Protection.

> (a) No person shall discharge, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted,

or caused to be filed or instituted any proceeding under this Act, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act.

30 C.F.R. 700.5 (1985), Definitions.

Person means an individual, Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands, partnership, association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization and any agency, unit, or instrumentality of Federal, State, or local government including any publicly owned utility or publicly owned corporation of Federal, State, or local government.

COUNTER-STATEMENT OF THE CASE

Petitioner seeks review of the Court of Appeals' decision that the Pennsylvania Department of Environmental Resources is not a "person" subject to the employee protection provision of Section 703 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §1293 (1982), ("Surface Mining Act"). The case reached the Court of Appeals after the United States District Court for the Middle District of Pennsylvania affirmed a decision of the United States Department of the Interior which held that the Pennsylvania Department of Environmental Resources ("DER") had not been shown to be engaged in surface coal mining operations and was therefore not a "person" subject to Section 703 of the Surface Mining Act, 30 U.S.C. §1293.

Petitioner's allegations of discrimination arise from personnel actions taken with respect to him by the DER during the course of his employment. Petitioner initiated a proceeding before the United States Department of the Interior pursuant to Section 703 of the Surface Mining Act, 30 U.S.C. §1293, alleging discriminatory actions by the DER. Petitioner also initiated proceedings before the Pennsylvania State Civil Service Commission, Pennsylvania Human Relations Commission, and the federal Equal Employment Opportunity Commission based upon the same allegations of discriminatory actions by the DER. The allegations of discriminatory actions by the DER which underlie the petition for writ of certiorari are those raised before the United States Department of the Interior.

Petitioner bases his petition for writ of certiorari on two grounds. First, Petitioner alleges that the Court of Appeals' decision undermines the enforcement of the Surface Mining Act. Second, Petitioner alleges that review of regulations promulgated under the Surface Mining Act may only be made through a petition for review to the United States District Court for the District of Columbia.

REASONS FOR DENYING THE WRIT

1. The issues raised in the petition for writ of certiorari do not fall within the considerations for the grant of certiorari recognized by this Court. Sup. Ct. R. 17 (1985). Petitioner does not set forth any recognized special or important reasons why certiorari should be granted. *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70 (1955). Petitioner does not allege that the Court of Appeals' decision conflicts with the decision of another Court of Appeals, decides a federal question in a way in conflict with a state court of last resort, departs from the accepted and usual course of judicial proceedings, or results in a federal question being decided in a way in conflict with applicable decisions by this Court. *See* Sup. Ct. R. 17.

Petitioner's arguments are only directed towards the need for uniform rulemaking and review (Pet. App. 15 and 17). The Court of Appeals' decision does not invalidate the regulatory definition of the term "person" at 30 C.F.R. 700.5 (1985). The decision only addresses the applicability of Section 703 of the Surface Mining Act, 30 U.S.C. §1293 (1982), to a state agency and does not affect the validity of the definition of the term "person" in 30 C.F.R. 700.5, the process of the promulgation of regulations, their review, or create the potential for non-uniform decisions under the Surface Mining Act. Petitioner's arguments only seek to force upon federal fora allegations of discrimination that have been unsuccessfully litigated before appropriate state fora.

2. Petitioner argues that the regulatory amendment to the definition of the term "person" at 30 C.F.R. 700.5 (1985), which added a state agency, brings the DER within the definition of a "person" who is subject to a Section 703 employee protection proceeding. This line of argument is not consistent with the statutory definition of the term "person" set forth in Section 701(19) of the Surface Mining Act, 30 U.S.C. §1291(19) (1982), existing case law of this Court, or the preamble language of the regulatory amendment to the definition of the term "person" at 30 C.F.R. 700.5.

Section 701(19) of the Surface Mining Act, 30 U.S.C. §1291(19), defines the term "person" to mean

> an individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization.

Where a statutory definition defines what a term means, that meaning is controlling and excludes any other meaning. *Colautti v. Franklin,* 439 U.S. 379 (1979). The failure of Congress to include a state or state agency within the statutory definition of the term "person" in Section 701 (19) of the Surface Mining Act, 30 U.S.C. §1291(19), evidences an intent to exclude a state from the definition of the term "person". *United States v. United Mine Workers of America,* 330 U.S. 258 (1947).[1] Here, the DER is not a "person" for purposes of a Section 703 employee protec-

[1] *See also* the definition of person in 1 U.S.C. §1 (1982); United States v. Cooper Corporation, 312 U.S. 600, 604 (1941), and United States v. Fox, 94 U.S. 315, 321 (1876).

tion proceeding because Congress did not intend for it to be one.

Section 524 of the Act, 30 U.S.C. §1274 (1982), states

> any agency, unit, or instrumentality of Federal, State, or local government, including any publicly owned utility or publicly owned corporation of Federal, State, or local government, which proposes to engage in surface coal mining operations which are subject to the requirements of this Act shall comply with the provisions of title V.

Thus, a state agency, when engaged in surface mining operations, is subject to Title V of the Surface Mining Act, 30 U.S.C. §§1251-1279 (1982), which contains various administrative and environmental performance requirements for the operation of a surface coal mine. The regulatory definition of the term "person" at 30 C.F.R. 700.5 was amended to include,

> an individual, Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands, partnership, association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization and any agency, unit, or instrumentality of Federal, State, or local government including any publicly owned utility or publicly owned corporation of Federal, State, or local government.

44 Fed. Reg. 15314, March 13, 1979. This amendment added a state agency to the regulatory definition of "person". However, the purpose of the regulatory amendment was not to expand the scope of the Surface Mining Act to include state agencies in Section 703 employee protection proceedings, rather, it only included state agencies within the expanded definition of the term "person" for purposes of administrative or environmental performance requirements when they were engaged in surface mining operations.[2] In the preamble language to the regulatory amendment, the Secretary of the Department of the Interior stated that a broader definition was needed where the Act requires the involvement of and coordination among various state agencies,[3] and where the involvement of state and local agencies creates an interest in the actions taken by a state under its approved program.[4] Moreover, it was not

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[2] In addition, specified governmental agencies are included because under Section 524 of the Act, they are subject to regulation when engaged in surface coal mining and reclamation operations and because such agencies have definite interests in actions taken under the Act.

44 Fed. Reg. 14912, March 13, 1979.

[3] The Act mandates the involvement of and close coordination among many different agencies. Various agencies play important roles in the abandoned land's program in Title IV of the Act, in the regulatory process in terms of providing data, permit application reviews, performance standards compliance, and in designation of lands unsuitable for all or certain types of surface coal mining operation. (See Sections 503 (a)(6), 504(b), 507(b)(11), 508(a)(9), 510(b)(3), 510(c), 515(b)(2)(8), 515(b)(10)(B), 515(b)(12), 515(c), 515(e), and 522 of the Act.)

Id.

[4] OSM [the Office of Surface Mining Reclamation and Enforcement of the United States Department of the Interior] believes the involvement of other State and local agencies, which the Act specifies, establishes an interest on the part of

the intention of the regulatory amendment to allow state agencies to be sued where not expressly provided for in the Surface Mining Act.

> OSM does not intend by this to expand upon an agency's capacity to sue or be sued where the Act does not clearly indicate that the agency has an interest in the actions being taken. In such situations, existing principles of State or Federal law would govern.

44 Fed. Reg. 14912, March 13, 1979.

The Court of Appeals' decision that the definition of the term "person" was expanded by regulatory amendment for only limited purposes, which do not include a Section 703 employee protection proceeding, is consistent with the Secretary of the Interior's rationale for the regulatory amendment to the definition of the term "person" and this Court's holding that the Surface Mining Act does not regulate the states as states, but regulates only "individual businesses necessarily subject to the dual sovereignty of the government of the Nation and the State in which they reside." *Hodel v. Virginia Surface Mining and Reclamation Association,* 452 U.S. 264, 293 (1981) (citation omitted).[5]

> those agencies in actions taken by the regulatory authority under State programs, particularly actions relating to permits and designations. Therefore, OSM believes that inclusion of the government agencies in the definition of 'person' is justified.

Id.

[5] The Surface Mining Act was not intended to interfere with a state's relationship with its employees.

Moreover, such a ruling is consistent with this Court's interpretation of the Eleventh Amendment to the United States Constitution that an unconsenting state is immune from suit brought in federal court by her citizens. *Atascadero State Hospital v. Scanlon,* 105 S.Ct. 3142, 3145 (1985); *Pennhurst State School and Hospital v. Halderman,* 465 U.S. 89, 100 (1984).

3. Petitioner argues that the sole method for review of regulations promulgated under the Surface Mining Act is through the filing of a petition for review in the United States District Court for the District of Columbia. Whatever the proper procedures are for challenging the validity of regulations promulgated pursuant to the Surface Mining Act, they are not relevant to the DER's defense that it is not a "person" subject to a Section 703 employee protection proceeding.

The DER did not challenge the validity of the regulatory definition of the term "person" at 30 C.F.R. 700.5 (1985); rather, it alleged that it was not subject to a Section 703 employee protection proceeding because it was not a "person" as defined by Section 701(19) of the Surface Mining Act, 30 U.S.C. §1291(19) (1982). As noted by the

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> Regulation of surface coal mining by the federal government does not in any sense threaten the states' 'separate and independent existence'. It does not intrude on the states' relationship with their own employees. Rather, the regulation of surface coal mining involves only the regulation of 'individual businesses necessarily subject to the dual sovereignty of the government of the Nation and of the State in which they reside'.

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Court of Appeals, "Leber misstates DER's position. DER does not challenge the regulation's legality, but only Leber's interpretation of it."[6]

The Court of Appeals' decision does not invalidate the regulatory definition of the term "person" at 30 C.F.R. 700.5. It only addresses the application of the regulation to a Section 703 employee protection proceeding involving a state agency. As a result, the Court of Appeals acted within its jurisdiction in reviewing the application of the statutory and regulatory definitions of the term "person" under the Surface Mining Act to the DER in a Section 703 employee protection proceeding.

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[6] James E. Leber v. Pennsylvania Department of Environmental Resources, et al., 780 F.2d 372, 376 (3rd Cir. 1986). Pet. App. at A-11.

CONCLUSION

For the foregoing reasons, Respondent Department of Environmental Resources respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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